ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of APPLICATION OF AMERITECH MICHIGAN PURSUANT TO SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996 TO PROVIDE IN-REGION, INTERLATA SERVICES IN MICHIGAN	CC Docket No. 97-137

REPLY OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

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SUMMARY

The Telecommunications Resellers Association ("TRA"), a trade association representing more than 500 entities engaged in, or providing products and services in support of, telecommunications resale, hereby replies to the comments of Bell Atlantic and BellSouth filed in response to the application of Ameritech Michigan for authority to "originate" interLATA service within its "in-region State" of Michigan. Bell Atlantic and BellSouth, while not directly advocating grant of the Ameritech Michigan Application, urge the Commission to reach certain conclusions regarding the showings Bell Operating Companies must make to warrant grant of "in-region," interLATA authority under Section 271(d)(3).

Bell Atlantic's and BellSouth's arguments to the contrary notwithstanding, TRA submits that "paper commitments," whether included in a single network access/interconnection agreement or generally available through viable "most favored nation" clauses, are not adequate to demonstrate full "competitive checklist" compliance under "Track A." As the Commission has correctly noted, the term "providing" requires actual commercial usage in the market. All 14 "competitive checklist" items, therefore, must have been "fully implemented" and the competing providers upon which the BOC relies to satisfy Section 271(c)(1)(A) must be actually utilizing all 14 items. The rationale for this approach is manifest. The only reliable means by which to determine that the 14-point "competitive checklist" has been "fully implemented" is to assess whether each of the "competitive checklist" items actually works in a commercial environment.

TRA further submits that reading out of the Section 271(c)(1)(A) mandate that a BOC be facing "facilities-based" competition the requirement that the facilities used by such a competitor be owned by the competitor, or at least controlled by it apart from the BOC, as

advocated by BellSouth, would effectively "gut" the mandate, rendering it virtually meaningless. The obvious reason for requiring the presence of a facilities-based competitor is to make sure that there is at least one competing provider in the market that is not wholly reliant on the BOC for network services. It belabors the obvious to suggest that a competitor that must order essential facilities from a BOC and that must look to the BOC to provision, operate, maintain and/or repair those facilities will remain highly vulnerable to strategic manipulation of those various processes. It matters little whether the competitor is reselling services under Section 251(c)(4) or facilities under Section 251(c)(3). The degree of vulnerability will not vary significantly between the two approaches because the vulnerability is rooted in the unavoidable reliance upon the BOC for the ability to serve customers.

BellSouth is also mistaken in its belief that the Commission must accord the term "own facilities" the same meaning here that it applied for purposes of determining eligibility for Federal universal service support. In the universal service context, interpreting the term "own facilities" to include unbundled network elements is reasonable because the competing provider has "paid the full cost of the facility, including a reasonable profit to the ILEC" and necessary because if the term "own facilities" is interpreted not to include unbundled network elements, "the end result would be that the entry strategy that includes the exclusive use of unbundled network elements would be the *only* form of entry that would not benefit from, either directly or indirectly, universal service support." In the context of BOC entry into the "in-region," interLATA market, "look[ing] to other sections of the Act and to legislative intent to resolve the ambiguity," produces a different reading -- one that excludes unbundled network elements from a competing provider's own facilities in order to ensure that when a BOC enters the "in-region,"

interLATA market it is facing a competitor that is not reliant upon it for the network facilities necessary to serve its customers.

TRA agrees with BellSouth that the Commission in applying the Section 271(d)(3)(C) public interest standard must weigh the competitive harms and benefits of BOC entry into the "in-region," interLATA market. In TRA's view, however, the cost of authorizing premature entry by the BOCs into the "in-region," interLATA market is enormous, with at best a marginal, short-term countervailing benefit. Critically, the opportunity to ensure the competitive provision of local exchange/exchange access service would be lost, given that the only incentive that may be strong enough to motivate the BOCs to permit facilities-based and other competitive entry is their desire to provide "in-region," interLATA service. Moreover, if the BOCs are permitted to enter the "in-region," interLATA market without first dismantling their local exchange/exchange access "bottlenecks," interexchange competition in the long-term will be diminished. The countervailing benefits would be the entry of six, soon to be five or fewer, new entrants into a market already populated by hundreds of providers, currently offering service over a half dozen national, and a host of regional, networks. The balance of costs and benefits shifts dramatically as competition takes hold in the local exchange/exchange access market. As the Commission explained, "competition in the local exchange and exchange access market is desirable not only because of the social and economic benefits competition will bring to consumers of *local* services, but also because competition eventually will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition."

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APPLICATION OF AMERITECH MICHIGAN PURSUANT TO SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996 TO PROVIDE IN-REGION, INTERLATA SERVICES IN MICHIGAN	)	**CC Docket No. 97-137**

REPLY OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Public Notice, DA 97-1072 (released May 21, 1997), hereby replies to the comments of Bell Atlantic and BellSouth Corporation ("BellSouth") filed in response to the application ("Application") of Michigan Bell Telephone Company d/b/a Ameritech Michigan ("Ameritech Michigan") under Section 271(d) of the Communications Act of 1934 ("Communications Act"),[1] as amended by Section 151 of the Telecommunications Act of 1996 ("Telecommunications Act"),[2] for authority to "originate," through its wholly-owned affiliate Ameritech Communications, Inc. ("ACI"), interLATA service within the Ameritech Michigan "in-region State" of Michigan.

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[1] 47 U.S.C. § 271(d).

[2] Pub. L. No. 104-104, 110 Stat. 56, § 151 (1996).

I.

INTRODUCTION

In its Opposition to the Ameritech Michigan Application,[3] TRA urged the Commission to deny Ameritech Michigan the authority it seeks to "originate" through ACI interLATA services within the Ameritech Michigan "in-region State" of Michigan. As TRA demonstrated in its Opposition, Ameritech Michigan has failed not only to satisfy the threshold requirements set forth in Section 271(c) for Bell Operating Company ("BOC") provision of "in-region," interLATA service,[4] but the carrier has not demonstrated that grant of the authorization it seeks here would be consistent with the public interest, convenience and necessity, as required by Section 271(d)(3)(C).[5] The Commission, accordingly, cannot make the affirmative findings required by Section 271(d)(3) to support a grant of the Ameritech Michigan Application.[6]

Bell Atlantic and BellSouth (collectively, the "BOC Commenters"), while not directly advocating grant of the Ameritech Michigan Application, urge the Commission to reach certain conclusions regarding the showings BOCs must make to warrant grant of "in-region," interLATA authority under Section 271(d)(3). Among other things, Bell Atlantic and BellSouth contend that (i) a BOC may rely upon multiple network access/interconnection agreements, or one or more such agreements and a "Track B" "Statement of Generally Available Terms and

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[3] "Opposition of the Telecommunications Resellers Association" filed in CC Docket No. 97-137 (filed June 10, 1997).

[4] 47 U.S.C. § 271(c).

[5] 47 U.S.C. § 271(d)(3)(C).

[6] 47 U.S.C. § 271(d)(3).

Conditions" ("SGATC"), to satisfy the Section 271(c)(2)(B) 14-point "competitive checklist;"[7] (ii) unbundled network elements obtained from a BOC should be deemed to be a competing provider's "own facilities" for purposes of evaluating BOC compliance with Section 271(c)(1)(A);[8] (iii) a BOC need not be actually furnishing all 14 "competitive checklist" items in order to be deemed to have "fully implemented" the "competitive checklist;"[9] (iv) Section 271(c)(1)(A) should be deemed satisfied if both residential and business subscribers are being served by competing providers even if no competing provider is serving both residential and business subscribers;[10] (v) "isolated implementation problems" should not be allowed to undermine a BOC's "competitive checklist" compliance;[11] (vi) no showing of actual competition is required for a BOC to demonstrate compliance with Section 271(c) even under "Track A;"[12] and (vii) immediate BOC entry into the "in-region," interLATA market would further the public interest.[13] TRA disagrees with each of these contentions.

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[7] Comments of Bell Atlantic at 3 - 4; Comments of BellSouth at 1 - 2, 7 - 8.

[8] Comments of BellSouth at 3 - 5.

[9] Comments of Bell Atlantic at 5 - 6; Comments of BellSouth at 5 - 7.

[10] Comments of BellSouth at 2 - 3.

[11] Comments of BellSouth at 8 - 10.

[12] Comments of Bell Atlantic at 6 - 8; Comments of BellSouth at 10 - 14.

[13] Comments of Bell Atlantic at 9 - 18; Comments of BellSouth at 14 - 20.

II.

ARGUMENT

A. To Satisfy the Requirements of Section 271(c)(1), Ameritech Michigan Must Fully Implement All 14 "Competitive Checklist" Items

In denying SBC Communication, Inc.'s ("SBC") application to originate interLATA traffic within the SBC "in-region State" of Oklahoma ("SBC Application"), the Commission drew a bright line between the "Track A" and the "Track B" compliance vehicles.[14] The Commission made clear that once a BOC has received a "qualifying request" for network access/interconnection, the BOC is precluded from further reliance upon "Track B."[15] The Commission defined a "qualifying request" as "a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of Section 271(c)(1)(A)."[16] Such request, the Commission continued, "need not be made by an operational competing provider . . . [but] may be submitted by a potential provider of telephone exchange service to residential and business subscribers."[17]

The Commission also ruled in denying the SBC Application that a BOC which has satisfied the requirements of Section 271(c)(1)(A) will "still be required to demonstrate

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[14] Application of SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, FCC 97-228, ¶¶ 27 - 59 (released June 26, 1997), *appeal pending sub nom.* SBC Communications Inc. v. FCC, Case No. 97-1425 (D.C. Cir. July 3, 1997).

[15] Id.

[16] Id. at ¶ 27.

[17] Id.

compliance with each and every item of the competitive checklist, including access to physical collocation, cost-based unbundled loops, and reliable OSS functions before it may gain entry under Track A."[18] The Commission further shed light on the nature of such demonstrated compliance. First, the Commission confirmed that the burden is on the applying BOC to make the requisite showings under by Section 271(c).[19] Moreover, the Commission declared that mere "paper commitments" to provide service do not constitute the provision of service.[20]

In denying the SBC Application, the Commission has laid to rest two of the BOC Commenters' contentions here. A BOC may not rely upon a "Track B" SGATC to "fill in the gaps" in its "competitive checklist" compliance showing. By its own admission, Ameritech has received multiple "qualifying requests" for network access/interconnection and indeed, has entered into network access/interconnection agreements with a number of the requesting entities, several of which agreements have been approved by the Michigan Public Service Commission ("MPSC").[21] Hence, Bell Atlantic's and BellSouth's protestations to the contrary notwithstanding, Ameritech Michigan could not have relied upon the "general offer[ing]" of a "competitive checklist" item in a SGATC to satisfy Section 271(c)(2)(B).

While TRA does not disagree with the BOC Commenters that "most favored nation" clauses may be used to demonstrate compliance with Section 271(c)(2)(B) if the

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[18] Id. at ¶ 65.

[19] Id. at ¶ 13.

[20] Id. at ¶ 14.

[21] Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan, pp. 2 - 3, 5- 14 (filed May 21, 1997) ("Ameritech Michigan Brief").

provisions of multiple agreements are made generally available to all competing providers without restriction,[22] "paper commitments," whether they are included in a single network access/interconnection agreement or are generally available through viable "most favored nation" clauses, are not adequate to demonstrate full "competitive checklist" compliance under "Track A." Section 271(d)(3) requires full implementation of the "competitive checklist."[23] Section 271(c)(2)(A) requires that the BOC be "providing access and interconnection," which provision of access and interconnection must, in accordance with Section 271(c)(2)(B), include each of the 14 items on the "competitive checklist."[24] In so requiring, Sections 271(c) and 271(d)(3) repeatedly differentiate between "providing" and merely "offering" network access/interconnection

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[22] As TRA noted in its Opposition, however, a BOC should only be able to rely upon multiple agreements to demonstrate "competitive checklist" compliance if competing providers are in practice permitted to readily "avail [themselves] . . . of more advantageous terms and conditions subsequently negotiated by any other carrier." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶¶ 1310, 1316 (1996), *motion for stay denied,* 11 FCC Rcd. 11754, *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19734 (1996), *further recon. pending, pet. for rev. pending sub nom.* Iowa Utilities Board v. FCC (and consolidated cases), Case No. 96-3321, *et al.,* (8th Cir. Sept. 5, 1996), *partial stay granted* 109 F.3d 1418 (1996), *stay lifted in part* (Nov. 1, 1996), *motion to vacate stay denied* 117 S.Ct. 429 (1996). TRA expressed concern that the record in MSPC Case No. U-11104 suggests that Ameritech may be erecting obstacles to the effective use of "most favored nation" provisions, creating delay and uncertainty regarding the general availability of terms and conditions included in any given agreement. *See, e.g.,* TCG Detroit's Submittal of Supplemental Information Regarding Ameritech's Breach of Interconnection Agreement, submitted to the Michigan Public Service Commission in In the Matter of, on the Commission's own Motion, to Consider Ameritech Michigan's Compliance with the Competitive Checklist in Section 271 of the Telecommunications Act of 1996, Case No. U-111104, on May 8, 1997 (Ameritech Michigan Application, Vol. 4.1, AM-4-006620 - 32).

[23] 47 U.S.C. § 271(d)(3)(A)(i).

[24] 47 U.S.C. §§ 271(c)(2)(A), 271(c)(2)(B).

in general and "competitive checklist" items in specific, allowing the former under "Track B," but requiring the latter under "Track A."[25]

As the Commission has correctly noted, the term "providing" requires actual commercial usage in the market.[26] It is not enough that a "competitive checklist" item is available on paper. It is not sufficient that a "competitive checklist" item has purportedly been tested by the applying BOC. All 14 "competitive checklist" items must have been "fully implemented" and the competing providers upon which the BOC relies to satisfy Section 271(c)(1)(A) must be actually utilizing all 14 items. As unequivocally stated in the Conference Report, "[t]he requirement that a BOC is 'providing access and interconnection' means that the competitor has implemented the agreement and the competitor is operational."[27]

The rationale for the approach embodied in Sections 271(c) and 271(d)(3) is manifest. The only reliable means by which to determine that the 14-point "competitive checklist" has been "fully implemented" is to assess whether each of the "competitive checklist" items actually works in a commercial environment. The Congressional goal of securing for consumers the benefits of a competitive local exchange/exchange access market will not be furthered if "competitive checklist" items which are "available on paper" are not in fact fully functional, adequate to the task, and readily available to competing providers at necessary

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[25] 47 U.S.C. §§ 271(c)(1)(A), (B), 271(c)(2)(A)(i)(I), (II), 271(c)(2)(B), 271(d)(3)(A)(i), (ii).

[26] Application of SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, FCC 97-228 at ¶ 14.

[27] Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 148 (1996) ("Conference Report").

locations and in sufficient quantities. If the "proof of the pudding is in the eating," the proof of the availability of "competitive checklist" items is in their actual use. Actual use will reveal flaws, errors, problems and other deficiencies even the best-intentioned testing will not show. If a competing provider cannot fully satisfy the needs of its customers because one or more "competitive checklist" items have not been properly designed, tested and implemented, are not practically available with respect to geographic location and quantity, or are not adequately supported, those "competitive checklist" items have not been fully implemented.

Logically then, BellSouth is mistaken when it opines that "isolated implementation issues cannot undermine checklist compliance." Such "isolated implementation issues" are the smoke that reveals the fire. Given the relatively small scale of local exchange/exchange access competition at this juncture, "isolated implementation issues" assume a far greater significance than they would in a dynamic market populated by numerous established competitors. In the latter circumstance, "isolated implementation issues" would be the exception rather than the rule. In the early stages of competitive entry into a monopoly bastion such as the local exchange/exchange access market, "isolated implementation issues" are likely to be indicative of significant structural problems that will proliferate as the number of competitors, and their service demands, increase. One of the prices that a BOC that elects to apply for "in-region," interLATA authority before local exchange/exchange access competition has taken root is the need to treat every problem experienced by competitors as a matter of consequence.

B. The BOC Commenters' Relaxed Interpretation of Section 271(C)(1)(A) Cannot be Sustained

Bell Atlantic and BellSouth seek to reduce the force of the Section 271(c)(1)(A) mandate in three critical respects. First, BellSouth seeks to redefine a facilities-based competitor's "own facilities" to include unbundled network elements obtained from the BOC. Second, BellSouth argues that no one facilities-based competitor need be providing local exchange/exchange access service to both residential and business subscribers if both residential and business subscribers are being served by competing providers. Third, the BOC Commenters contend that no showing of actual competition is required to demonstrate "Track A" compliance. TRA submits that in each instance, the BOC Commenters are seriously mistaken.

Reading out of the Section 271(c)(1)(A) mandate that a BOC be facing "facilities-based" competition the requirement that the facilities used by such a competitor be owned by the competitor, or at least controlled by it apart from the BOC, would effectively "gut" the mandate, rendering it virtually meaningless. Ultimate control of an unbundled network element will always reside with the BOC from which it is obtained. The BOC owns the facility. The facility must be ordered from the BOC. In many instances, such as those in which unbundled network elements are priced on a usage-sensitive basis, the BOC will operate the facility.[28] In most

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[28] *See, e.g.,* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶¶ 416 ("The requirements we establish for local switch unbundling do not entail physical division of the switch . . ."); 445 ("We require incumbent LECs to provide unbundled access to shared transmission facilities between end offices and the tandem switch. . . . We do not require [physical] partitioning [of DCS equipment] for the provision of DCS capabilities. . . . [w]e only require incumbent LECs to permit competitors to use DCS functionality in the same manner that incumbent LECs now permit IXCs to use such functionality.").

instances, the BOC will maintain and repair the facility. In all instances, the facility will be a part of the BOC's physical network and therefore subject to BOC intrusion.

BellSouth's suggestion that a competing provider has the same level of control over a network element obtained from a BOC as it does over a facility it owns or leases from an independent third party is, bluntly put, highly disingenuous. As the Commission has recognized, "[f]or some elements, especially the loop, the requesting carrier will purchase exclusive access to the element for a specific period."[29] As to other elements, including "shared facilities such as common transport," a competitor will "essentially be purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis."[30] This twin concept of network elements, the Commission emphasized, "does not alter the incumbent LEC's physical control or ability or duty to repair and maintain network elements."[31]

The obvious reason for requiring the presence of a facilities-based competitor is to make sure that there is at least one competing provider in the market that is not wholly reliant on the BOC for network services. It belabors the obvious to suggest that a competitor that must order essential facilities from a BOC and that must look to the BOC to provision, operate, maintain and/or repair those facilities will remain highly vulnerable to strategic manipulation of

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[29] Id. at ¶ 258.

[30] Id.

[31] Id.

those various processes.[32] It matters little whether the competitor is reselling services under Section 251(c)(4) or facilities under Section 251(c)(3). The degree of vulnerability will not vary significantly between the two approaches because the vulnerability is rooted in the unavoidable reliance upon the BOC for the ability to serve customers.

The Conference Report confirms this assessment. When discussing the requirement that a competitor offer service exclusively or predominantly over its "own facilities," the Conference Report makes reference to "a fully redundant network" and to the cables through which cable television service providers deliver video signals into subscribers' homes and offices.[33] It is in contrast to facilities such as these that are owned or controlled by competing providers wholly apart from a BOC that the Conference Report makes reference to "[s]ome facilities and capabilities (*e.g.,* central office switching)" that most competitors will likely need to obtain from the BOC as network elements.[34] It is also noteworthy in this respect that the only reference to "facilities" in Section 251(c) is with respect to the interconnection of two independent physical networks, one of which is owned and operated by the BOC, the other of which is under the control of the interconnecting carrier; no suggestion is made there that unbundled network elements will become the facilities of competing providers.[35]

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[32] "We are also cognizant of the fact that incumbent LECs have the incentive and the ability to engage in many kinds of discrimination. For example, incumbent LECs could potentially delay providing access to unbundled network elements, or they could provide them to new entrants at a degraded level of quality. Id. ¶ 307.

[33] Conference Report at 148.

[34] Id.

[35] 47 U.S.C. § 251(c).

BellSouth is also mistaken in its contention that the Commission must accord the term "own facilities" the same meaning here that it applied for purposes of determining eligibility for Federal universal service support. As the Commission emphasized in its Universal Service Order, "the word 'own' . . . is a 'generic term' that 'varies in its significance according to its use.'"[36] Thus, as the Commission explained to the U.S. Court of Appeals for the Eighth Circuit, the meaning of "own facilities" must be drawn from its statutory context and interpreted in light of Congressional objectives and need not be consistent throughout the Telecommunications Act:

> The Commission's decision in the Universal Service Order (paras. 151-53) to adopt a narrower, "physical network component" definition of "facilities" under Section 214(e) has no bearing on the reasonableness of the Commission's statutory analysis under Section 153(29). In that different context of defining which carriers are eligible for universal service support, the Commission sensibly explained that a broader definition, such as that suggested by the language of Section 153(2(9), would allow a "pure reseller" whose only "facilities" consisted of a billing office to receive universal service support even though the language of section 214(e) clearly indicated that universal service support should not be available to pure resellers.[37]

The different contexts in which the term "own facilities" is used in Sections 214(e)(1)(A) and 271(c)(1)(A) also support different interpretations.[38] In the universal service context, interpreting the term "own facilities" to include unbundled network elements is reasonable because the competing provider has "paid the full cost of the facility, including a

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[36] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, ¶ 158 (released May 8, 1997), *pet. for stay pending, pet. for rev. pending sub nom.* Texas Office of Public Utility Counsel v. FCC, Case No. 97-60421 (5th Cir. June 25, 1997) (footnote omitted).

[37] Id.

[38] 47 U.S.C. §§ 271(c)(1)(A), 214(e)(1)(A).

reasonable profit to the ILEC" and necessary because if the term "own facilities" is interpreted not to include unbundled network elements, "the end result would be that the entry strategy that includes the exclusive use of unbundled network elements would be the *only* form of entry that would not benefit from, either directly or indirectly, universal service support."[39] In the context of BOC entry into the "in-region," interLATA market, "look[ing] to other sections of the Act and to legislative intent to resolve the ambiguity,"[40] produces a different reading -- one that excludes unbundled network elements from a competing provider's own facilities in order to ensure that when a BOC enters the "in-region," interLATA market it is facing a competitor that is not reliant upon it for the network facilities necessary to serve its customers.

BellSouth's contention that Section 271(c)(1)(A) does not require that at least one competing provider must be providing service to both residential and business subscribers cannot be squared with the text of the provision. On its face, Section 271(c)(1)(A) mandates that in order to show the "presence of a facilities-based competitor", a BOC must be providing network access/interconnection, pursuant to an approved Section 252 agreement, to one or more "competing providers of telephone exchange service . . . to residential and business subscribers."[41] The Conference Report confirms this reading in characterizing Section 271(c)(1)(A) as requiring that "a BOC must have entered into one or more binding agreements under which it is providing access and interconnection to one or more competitors providing telephone exchange service to

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[39] Federal-State Joint Board on Universal Service, CC Docket No. 96-45 at ¶¶ 160, 166 (emphasis in original).

[40] Id. at ¶ 155.

[41] 47 U.S.C. § 271(c)(1)(A).

residential and business subscribers."[42] If Congress had intended for the Section 271(c)(1)(A) standard to be the relaxed requirement championed by BellSouth, the Conference Report undoubtedly would have inserted the words "which are together" after the work "competitors."

The above reading is consistent with the logic of identifying a "facilities-based competitor" as a prerequisite to BOC entry into the "in-region," interLATA market. Requiring the presence of a facilities-based competitor ensures that the BOC must be facing at least one competing provider which is not reliant on the BOC to serve its customers before it is permitted to provide "in-region," interLATA service. All customers, including resale carriers, will thereby be assured of at least one viable alternative source of service, if that facilities-based provider serves both residential and business customers. As the Congress was well aware, a carrier that provides service to the full range of customers is the most likely to serve as an effective check on the BOC's market power. A carrier that serves only a portion of the market presents a far less forceful competitive threat.

The same logic also argues against the BOC Commenters' claim that a BOC need not be facing any measurable competition in order to be granted authority under "Track A" to enter the "in-region," interLATA market. The entire thrust of Section 271(c)(1)(A) is to ensure that the local exchange/exchange access market is truly open to competitive entry before a BOC is permitted to provide "in-region," interLATA service. Facilities-based competition, the Congress clearly understood, was the only effective check on the exercise by the BOCs of their formidable market power. Only if consumers and other carriers can look elsewhere for local

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[42] Conference Report at 148.

exchange and/or exchange access service will that market power be blunted. There is simply no way to determine whether a monopoly market has been opened to competitive entry until competitors have entered and established a viable presence in the market. Given the myriad means by which incumbent LECs can impede competitive entry and/or hinder the operation of competitive providers,[43] "paper commitments" are wholly inadequate. Until a competitor is actually operational and has demonstrated the ability to serve customers on a large scale, a market cannot be deemed to be open. Actual, measurable competition is the key.

C. The Public Interest Would Not be Served by Premature BOC Entry into the "In-Region," InterLATA Market

TRA agrees with Bell Atlantic as to one critical point, and with BellSouth as to another. Bell Atlantic asserts that the "Congress could not have meant for the public-interest standard of subparagraph (C) to be redundant with its requirements in subparagraphs (A) and (B)."[44] TRA agrees at least in part. Provisions of statutes should never be treated as superfluous. TRA also agrees with BellSouth that the Commission in applying the Section 271(d)(3)(C) public interest standard must weigh the competitive harms and benefits of BOC entry into the "in-region," interLATA market.[45] TRA's agreement with the BOC Commenters, however, stops at this point.

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[43] *See, e.g.,* Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, CC Docket No. 96-149, FCC 96-489 ¶¶ 7 - 13 (released Dec. 24, 1996), *pet. for rev. pending sub nom.* Bell Atlantic Tel. Cos. v. FCC, Case No. 97-1067 (D.C. Cir. Jan. 31, 1997), *recon. pending.*

[44] Comments of Bell Atlantic at 9 - 18.

[45] Comments of BellSouth at 10 - 14.

In TRA's view, the Congress included a public interest test among the evaluative standards to be applied by the Commission in order to provide the Commission with the flexibility to ensure that the Congressional goal of "opening all telecommunications markets to competition" is realized. Obviously, the BOCs will, and ultimately should, be afforded the right to provide "in-region," interLATA service. Once a BOC has met the threshold requirements of Section 271(c), the question is no longer "if," but when, such entry should be allowed. It is in determining the timing of BOC entry into the "in-region," interLATA market following "full implementation" of the "competitive checklist" under either "Track A" or "Track B" that the Commission must undertake its public interest analysis. And this public interest analysis should include a thorough and reasoned assessment of the costs and benefits attendant to BOC market entry at that given point in time.

TRA submits that until such time as consumers in at least all of the major population centers in a State are able to select among two or more established facilities-based providers of local exchange/exchange access service, the costs attendant to BOC provision of "in-region," interLATA service will invariably outweigh the benefits associated therewith. As the Commission has recognized, the local exchange/exchange access markets remain "the last monopoly bottleneck strongholds in telecommunications."[46] It is indisputable that monopolists do not readily relinquish market power. "Because an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little incentive to assist new

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[46] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 4.

entrants in their efforts to secure a greater share of that market."[47] And, as the Commission has further acknowledged, the incumbent LECs are not only in a position to erect a host of economic and operational barriers to market entry,[48] but to leverage their "bottleneck" control of local exchange/exchange access facilities to disadvantage competing providers in the "in-region," interLATA market they seek to enter.[49]

Hence, the cost of authorizing premature entry by the BOCs into the "in-region," interLATA market is enormous, with at best a marginal, short-term countervailing benefit. Critically, the opportunity to ensure the competitive provision of local exchange/exchange access service would be lost. As Ameritech itself has conceded,[50] and the Commission has recognized,[51] the only incentive that may be strong enough to motivate the BOCs to permit facilities-based and other competitive entry is their desire to provide "in-region," interLATA service. Moreover, if the BOCs are permitted to enter the "in-region," interLATA market without first dismantling their local exchange/exchange access "bottlenecks," interexchange competition in the long-term will

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[47] Id. at ¶ 10.

[48] *See, e.g.,* Id. at ¶¶ 10 - 23.

[49] *See, e.g.,* Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, CC Docket No. 96-149, FCC 96-489 at ¶¶ 7 - 13.

[50] As Richard Notebaert, the Chief Executive Officer of Ameritech, candidly noted, "[t]he big difference between us and [the GTE] is they're already in long distance. What's their incentive to cooperate. "Holding the Line on Local Phone Rivalry," The Washington Post, pp. C-12, C-14 (Oct. 23, 1996).

[51] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 55 ("We find that incumbent LECs have no economic incentive, *independent of the incentives set forth in sections 271 and 274 of the 1996 Act,* to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services.") (emphasis added).

be diminished. The countervailing benefits would be the entry of six, soon to be five or fewer, new entrants into a market already populated by hundreds of providers, currently offering service over a half dozen national, and a host of regional, networks.[52] Indeed, in contrast to the "monopoly bottleneck stronghold," the interexchange market the BOCs seek to enter has long been classified by the Commission as "substantially competitive."[53]

The balance of costs and benefits shifts dramatically as competition takes hold in the local exchange/exchange access market. As the Commission explained, "the relationship between fostering competition in local telecommunications markets and promoting greater competition in the long distance market is fundamental to the 1996 Act."[54] "Competition in the local exchange and exchange access market is desirable," the Commission reasoned, "not only because of the social and economic benefits competition will bring to consumers of *local* services, but also because competition eventually will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition."[55] "Thus, under the 1996 Act, the opening of one of the last monopoly bottleneck

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[52] Motion of AT&T to b Reclassified as a Non-Dominant Carrier, 11 FCC Rcd. 3271 (1995); Long Distance Market Shares (Third Quarter 1996), Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Table 5 (Jan. 15, 1997); Fiber Deployment Update: End of Year 1995, Kraushaar, J. M., Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, 6 - 14 (July 1996).

[53] Competition in the Interstate, Interexchange Marketplace, 6 FCC Rcd. 5880, ¶ 36 (1991), 6 FCC Rcd. 7255 (1991), 6 FCC Rcd. 7569 (1991), 7 FCC Rcd. 2677 (1992), *recon.* 8 FCC Rcd. 2659 (1993), 8 FCC Rcd. 3668 (1993), 8 FCC Rcd. 5046 (1993), *recon.* 10 FCC Rcd 4562 (1995).

[54] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 4.

[55] Id. (emphasis in original).

strongholds in telecommunications -- the local exchange and exchange access markets -- to competition is intended to pave the way for enhanced competition in *all* telecommunications markets, by allowing all providers to enter all markets."[56]

As TRA urged in its Opposition, the sequence is fundamental to furtherance of the public interest. The Commission has recognized, "the transformation from monopoly to fully competitive markets will not take place overnight."[57] In order to minimize associated costs and to maximize the attendant benefits, BOC entry into the "in-region," interLATA market should coincide with the emergence of actual, measurable local exchange/exchange access competition.

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[56] Id. (emphasis in original).

[57] Ameritech Operating Companies: Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, 11 FCC Rcd. 14028, ¶ 130 (released Feb. 15, 1996).

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association once again urges the Commission to deny the Application of Michigan Bell Telephone Company d/b/a Ameritech Michigan to provide, through its affiliate Ameritech Communications, Inc., interLATA service "originating" within the Ameritech Michigan "in-region State" of Michigan. As demonstrated by TRA above and in its earlier filed Opposition, Ameritech Michigan has failed to satisfy the requirements for providing "in-region," interLATA service set forth in Section 271(c), and to establish that the authorization it requests is consistent with the public interest, convenience and necessity, as required by Section 271(d)(3).

Respectfully submitted,

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